IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4423 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B. ANTATI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD.
Versus
PANCHIBEN D. MAKWANA & OTHERS

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Appearance :
MR KV GADHIA for Appellants.
MR MEHUL S SHAH for Respondents No.1 to 1/5.
None for Respondent No. 2, though served

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CORAM : HONOURABLE MR.JUSTICE H.B. ANTANI

Date : 26/12/2007

ORAL JUDGMENT

Permitted to amend the cause title of the appeal by

adding names of respondents No. 1/2 to 1/5. The amendment be carried out forthwith.

This is an appeal preferred under section 30 of the Workmen Compensation Act, 1923 against the judgment and order passed by the Workmen's Compensation Commissioner, Gandhidham, Kutch in W.C.F. No. 11 of 2005 whereby the learned Commissioner has allowed the application preferred by the claimants, awarding compensation of Rs.4,33,820/- to the heirs of the deceased with interest at 12% p.a. from 17.01.05 till the payment of compensation. The learned Commissioner has also awarded penalty at 50% of Rs.4,33,820/- against the appellant Insurance Company. The learned Commissioner has also awarded Rs.2000/- towards costs and Rs.1000/- towards funeral expenses. Being aggrieved by the award passed by the learned Commissioner, the appellant Insurance Company has preferred the present appeal.

Mr. K.V. Ghadia, learned advocate for the appellant contended the order passed by the learned Commissioner is without any evidence on record of the case. The learned Commissioner has erred in directing the Insurance Company to pay penalty of 50% on the sole ground that the Insurance Company has not deposited the amount of compensation. Learned advocate further contended that as per the provisions contained in the Workmen Compensation Act, the liability to pay compensation is of the employer and the Insurance Company cannot be fastened with the liability, and, therefore, on that ground alone, the direction with regard to payment of penalty is required to be quashed and set aside. Learned advocate further contended that even as per the ratio laid down by the

Honourable Apex Court in the case of K.R. PATEL vs. SHAHBHAI SOMABHAI PARMAR reported in 2005 (85) FLR 373, the Insurance Company is not liable to pay penalty and the learned Commissioner has committed an error in imposing penalty on the Insurance Company. Thus, the learned advocate submitted that the order passed by the learned Commissioner requires to be quashed and set aside. In the alternative, learned advocate submitted that the amount of penalty deposited by the Insurance Company may be refunded to the appellant Insurance Company and out of the amount of compensation awarded by the learned Commissioner, 40% may be paid to the original claimants by accounts payee cheque and the remaining 60% of the amount may be deposited in any nationalized Bank for a period of 5 years.

Mr. Mehul Shah, learned advocate appearing for respondents No.1 to 1/5, original claimants submitted that the learned Commissioner has, after appreciating the entire evidence on record of the case, allowed the application filed by the distraught heirs and legal representatives of the deceased and awarded compensation of of Rs.4,33,820/- to the heirs of the deceased with interest at 12% p.a from 17.01.05 till realization and it does not call for any interference in the appeal preferred by the Insurance Company. However, the learned advocate submitted that penalty of Rs.2,16,910/-awarded against the appellant and deposited by the appellant Insurance Company be returned to the Insurance Company, as the appellant Insurance Company is not liable to pay penalty.

I have heard the learned advocates at great length

and in great detail. I have also perused the detailed order passed by the learned Commissioner and the reasons assigned by him in coming to the conclusion that the appellant Insurance Company is liable to pay compensation of Rs.4,33,820/- to the claimants with interest at 12% from 17.01.2005. The learned Judge, in my considered view, has appreciated the evidence on record in proper perspective and no error is committed by him which would call for any interference by this Court in an appeal preferred by the Insurance Company. Even on re-appreciation and re-evaluation of the evidence on record, the order passed by the learned Commissioner is just and proper and the amount of compensation awarded to the claimants cannot be said to be exaggerated. However, in view of the judgment of the Honourable Supreme Court reported in 2005 (85) FLR 373, the Insurance Company is not liable to pay penalty and the said amount deposited by the Insurance Company is required to be refunded to it.

I have also heard the learned advocates as regards disbursement of the compensation. Mr.Shah submitted that there are in all five claimants – No.1 and 1/2 wife and daughter, No. 1/3 and 1/4 father and mother and No.1/5 brother of the deceased workman. He submitted that after paying Rs.2,16,910/- to the appellant Insurance Company, out of the remaining amount of compensation and interest deposited by the Insurance Company, 50% may be awarded to the claimants No. 1 and 1/2 [wife and daughter], 40% to claimants No.1/3 and 1/4, i.e. 20% each to father and mother] and 10% to claimant No. 1/5 [brother]. He further submitted that since claimant No. 1/3 and 1/4 - father and mother are aged persons, their

share may be paid to them by accounts payee cheque. He further submitted that out of the share of claimants No.1 and 1/2, 40% may be paid to claimant No.1 by accounts payee cheque and the remaining 60% may be invested in a Fixed Deposit. He further submitted that similar disbursement may be made in the case of claimant No.1/5. The other side has no objection for disbursement of the amount as prayed for on behalf of the original claimants.

In the result, the appeal preferred by the appellant Insurance Company is partly allowed.

The amount of Rs.2,16,910/- deposited by the appellant Insurance Company towards penalty is ordered to be refunded to the appellant Insurance Company by an accounts payee cheque.

Out of the remaining amount of compensation and interest deposited by the Insurance Company, it is held that claimants No.1 and 1/2 are entitled to get 50%, claimants No.1/3 and 1/4 are entitled to get 20% each and the claimant No.1/5 is entitled to get the remaining 10%.

It is further directed that the share of claimants No. 1/3 and 1/4, i.e. father and mother, be paid to them by respective accounts payee cheques, on proper verification and identification.

It is further directed that out of the share of claimants No.1 and 1/2, 40% be paid to the claimant No.1 by accounts payee cheque, on proper verification and identification.

Similarly, out of the share of claimant No.1/5, 40% be paid to him by accounts payee cheque, on proper verification and identification.

The remaining 60% of the share of claimants No. 1, 1/2 and 1/5 is ordered to be deposited in separate Fixed Deposits in with any nationalized Bank for a period of 5 years with a rider not to permit any loan or withdrawal for a period of 5 years. Fixed Deposit of the share of minor daughter, claimant No.1/2 shall be made in the joint name of claimant No.1, her mother. Fixed Deposit of the share of claimant No.1 and No.1/5 shall be made in their respective names. Interest accruing on the said Fixed Deposit of claimants No.1 and 1/2 shall be paid to the claimant No.1 on quarterly basis. Similarly, interest accruing on the Fixed Deposit of claimants No.1/5 shall be paid to him on quarterly basis. After expiry of the period of 5 years, claimant No. 1, 1/2 and 1/5 will be entitled to encash their respective fixed deposits without reference to the W.C. Commissioner or this Court.

The appeal stands partly allowed. There shall be no order as to costs.

mathew [H.B.ANTANI, J.]